Highlanders Alloys, LLC *and* United Steelworkers of America, AFL–CIO. Case 9–CA–40004

September 10, 2003

DECISION AND ORDER

BY CHAIRMAN BATTISTA AND MEMBERS SCHAUMBER AND WALSH

The General Counsel seeks a default judgment in this case on the ground that the Respondent has failed to file an answer to the complaint. Based on a charge and an amended charge filed by the Union on February 20 and April 18, 2003, respectively, the General Counsel issued the complaint on April 24, 2003, against Highlanders Alloys, LLC, the Respondent, alleging that it has violated Section 8(a)(1) and (5) of the Act. The Respondent failed to file an answer.

On June 3, 2003, the General Counsel filed a Motion for Entry of Default Judgment with the Board and a memorandum in support. On June 5, 2003, the Board issued an order transferring the proceeding to the Board and a Notice to Show Cause why the motion should not be granted. The Respondent filed no response. The allegations in the motion are therefore undisputed.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

Ruling on Motion for Default Judgment

Section 102.20 of the Board's Rules and Regulations provides that the allegations in the complaint shall be deemed admitted if an answer is not filed within 14 days from service of the complaint, unless good cause is shown. In addition, the complaint affirmatively states that unless an answer is filed within 14 days of service, all the allegations in the complaint will be considered admitted. Further, the undisputed allegations in the General Counsel's memorandum in support of the motion disclose that the Region, by letter dated May 13, 2003, notified the Respondent that unless an answer were received by May 23, 2003, a Motion for Default Judgment would be filed.

In the absence of good cause being shown for the failure to file a timely answer, we grant the General Counsel's motion for default judgment.

On the entire record, the Board makes the following

FINDINGS OF FACT

I. JURISDICTION

At all material times, the Respondent, a corporation with a place of business located in New Haven, West Virginia, has been engaged in the metal alloy business. During the 12-month period preceding the filing of the charge, the Respondent, in conducting its operations described above, purchased and received at its New Haven, West Virginia facility goods valued in excess of $50,000 directly from suppliers located outside the State of West Virginia. We find that the Respondent is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act and that the Union is a labor organization within the meaning of Section 2(5) of the Act.

II. ALLEGED UNFAIR LABOR PRACTICES

At all material times, the following individuals have held the position set forth opposite their names and have been supervisors of the Respondent within the meaning of Section 2(11) of the Act and agents of the Respondent within the meaning of Section 2(13) of the Act:

Borris Bannai	President
Merdith Marker	Human Resource Manager
"Joseph"	Foreman

About September 2002, the Respondent, by "Joseph," at its New Haven, West Virginia facility, told an employee that any employee who filed a grievance would be discharged.

At all material times, the following employees of the Respondent described in the extant collective-bargaining agreement between the Respondent and the Union constitute a unit appropriate for collective bargaining within the meaning of Section 9(b) of the Act:

> All individuals occupying production and maintenance jobs employed in and about [Respondent's] plant, excluding all individuals occupying foremen or supervisory positions, watchman, guards, office janitors, company chauffeurs, office clerical and professional positions, and technical and clerical jobs.

At all material times, the Union has been the designated collective-bargaining representative of the unit and has been recognized as such representative by the Respondent. This recognition has been embodied in a collective-bargaining agreement between the Respondent and the Union effective by its terms from April 29, 2002, until April 29, 2007 (the 2002–2007 agreement).

At all material times, based on Section 9(a) of the Act, the Union has been the exclusive collective-bargaining representative of the unit for the purposes of collective bargaining with respect to wages, hours of employment and other terms and conditions of employment.

About August 20, 2002, and thereafter, the Respondent has abrogated and failed to honor the central provisions

of the 2002–2007 collective-bargaining agreement relating to terms and conditions of employment of the unit, including, but not limited to, failing to pay the contractual wages, boot allowance, 401(k) contributions, health and welfare contributions, and health insurance benefits.

The conduct referred to above constitutes mandatory subjects of collective bargaining.

The Respondent engaged in the conduct described above without the Union's consent.

CONCLUSIONS OF LAW

By threatening employees that if any employee filed a grievance, the employee would be discharged, the Respondent has interfered with, restrained, and coerced employees in the exercise of the rights guaranteed in Section 7 of the Act, in violation of Section 8(a)(1) of the Act. In addition, by its failure and refusal to comply with the central provisions of the collective-bargaining agreement, the Respondent has been failing and refusing to bargain in good faith with the exclusive collective-bargaining representative of its employees, and has thereby engaged in unfair labor practices affecting commerce within the meaning of Section 8(a)(5) and (1) and Section 2(6) and (7) of the Act.

REMEDY

Having found that the Respondent has engaged in certain unfair labor practices, we shall order it to cease and desist and to take certain affirmative action designed to effectuate the policies of the Act. Specifically, having found that the Respondent violated Section 8(a)(5) and (1) since August 20, 2002, by abrogating and failing to honor the central provisions of the 2002–2007 collective-bargaining agreement relating to terms and conditions of employment of the unit, including, but not limited to, failing to pay the contractual wages, boot allowance, 401(k) contributions, health and welfare contributions, and health insurance benefits, we shall order the Respondent to honor and comply with the terms and conditions of the 2002–2007 collective-bargaining agreement. In addition, we shall order the Respondent to make whole its unit employees for any loss of earnings and other benefits they may have suffered as a result of the Respondent's failure to pay contractually required wages and fringe benefits since August 20, 2002.

We shall also order the Respondent to make all contractually required benefit fund payments or contributions that have not been made since August 20, 2002, including any additional amounts applicable to such delinquent payments in accordance with *Merryweather Optical Co.*, 240 NLRB 1213, 1216 fn. 6 (1979). Further, we shall order the Respondent to restore the unit employees' health insurance benefits. In addition, the Respondent shall reimburse unit employees for any expenses ensuing from its failure to make the benefit fund and insurance payments since August 20, 2002, as set forth in *Kraft Plumbing & Heating*, 252 NLRB 891 fn. 2 (1980), enfd. 661 F.2d 940 (9th Cir. 1981). All payments to the unit employees shall be computed in accordance with *Ogle Protection Service*, 183 NLRB 682 (1970), enfd. 444 F.2d 502 (6th Cir. 1971), with interest as prescribed in *New Horizons for the Retarded*, 283 NLRB 1173 (1987).[1]

ORDER

The National Labor Relations Board orders that the Respondent, Highlanders Alloys, LLC, New Haven, West Virginia, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Threatening employees by telling them that if any employee filed a grievance, the employee would be discharged.

(b) Failing and refusing to honor the central provisions of the 2002–2007 collective-bargaining agreement with the United Steelworkers of America, AFL–CIO, including, but not limited to, failing to pay the contractual wages, boot allowance, 401(k) contributions, health and welfare contributions, and health insurance benefits. The bargaining unit is:

> All individuals occupying production and maintenance jobs employed in and about [Respondent's] plant, excluding all individuals occupying foremen or supervisory positions, watchman, guards, office janitors, company chauffeurs, office clerical and professional positions, and technical and clerical jobs.

(c) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Honor and comply with the central provisions of the 2002–2007 collective-bargaining agreement with the Union including, but not limited to, paying the contractual wages, boot allowance, 401(k) contributions, health and welfare contributions, and health insurance benefits.

(b) Make whole the unit employees for any loss of earnings and other benefits they may have suffered as a

[1] To the extent that an employee has made personal contributions to a fund that are accepted by the fund in lieu of the employer's delinquent contributions during the period of the delinquency, the Respondent will reimburse the employee, but the amount of such delinquency will constitute a setoff to the amount that the Respondent otherwise owes the fund.

result of its failure to abide by the 2002–2007 collective-bargaining agreement, with interest, as set forth in the remedy section of this decision.

(c) Make all contractually required fringe benefit fund contributions on behalf of unit employees that have not been made since August 20, 2002, and reimburse unit employees for any expenses ensuing from its failure to make the required contributions, with interest, in the manner set forth in the remedy section of this decision.

(d) Restore the unit employees' health insurance benefits and reimburse unit employees for any expenses ensuing from its failure to make the required payments, with interest, in the manner set forth in the remedy section of this decision.

(e) Preserve and, within 14 days of a request, or such additional time as the Regional Director may allow for good cause shown, provide at a reasonable place designated by the Board or its agents, all payroll records, social security payment records, timecards, personnel records and reports, and all other records including an electronic copy of such records if stored in electronic form, necessary to analyze the amount of backpay due under the terms of this Order.

(f) Within 14 days after service by the Region, post at its facility in New Haven, West Virginia, copies of the attached notice marked "Appendix."[2] Copies of the notice, on forms provided by the Regional Director for Region 9, after being signed by the Respondent's authorized representative, shall be posted by the Respondent and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced or covered by any other material. In the event that, during the pendency of these proceedings, the Respondent has gone out of business or closed the facility involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by the Respondent at any time since August 20, 2002.

(g) Within 21 days after service by the Region, file with the Regional Director a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.

[2] If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

Dated, Washington, D.C., September 10, 2003

Robert J. Battista, Chairman

Peter C. Schaumber, Member

Dennis P. Walsh, Member

(SEAL) NATIONAL LABOR RELATIONS BOARD

APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated Federal labor law and has ordered us to post and obey this notice.

FEDERAL LAW GIVES YOU THE RIGHT TO

Form, join or assist a union
Choose representatives to bargain with us on your behalf
Act together with other employees for your benefit and protection
Choose not to engage in any of these protected activities.

WE WILL NOT threaten our employees by telling them that if any employee filed a grievance, the employee would be discharged.

WE WILL NOT fail and refuse to honor the central provisions of our 2002–2007 collective-bargaining agreement with the United Steelworkers of America, AFL–CIO, including, but not limited to, failing to pay the contractual wages, boot allowance, 401(k) contributions, health and welfare contributions, and health insurance benefits. The bargaining unit is:

> All individuals occupying production and maintenance jobs employed in and about our plant, excluding all individuals occupying foremen or supervisory positions, watchman, guards, office janitors, company chauffeurs, office clerical and professional positions, and technical and clerical jobs.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL honor and comply with the central provisions of our 2002–2007 collective-bargaining agreement with the Union, including, but not limited to, paying the contractual wages, boot allowance, 401(k) contributions, health and welfare contributions, and health insurance benefits.

WE WILL make whole the unit employees for any loss of earnings and other benefits they may have suffered as a result of our failure to abide by the provisions of our 2002–2007 collective-bargaining agreement since August 20, 2002, with interest.

WE WILL make all contractually required fringe benefit fund contributions that have not been made on behalf of unit employees since August 20, 2002, and WE WILL reimburse unit employees for any expenses ensuing from our failure to make the required contributions, with interest.

WE WILL restore unit employees' health insurance benefits and WE WILL reimburse unit employees for expenses ensuing from our failure to make the required payments, with interest.

HIGHLANDERS ALLOYS, LLC